

**SETTLEMENT AGREEMENT BETWEEN THE STATE
BOARD OF EMBALMERS AND FUNERAL DIRECTORS AND FOREVER
NETWORK, INC D/B/A FOREVER OAK HILL FUNERAL HOME**

COMES NOW the State Board of Embalmers and Funeral Directors (the ABoard@) and Forever Network, Inc. d/b/a Forever Oak Hill Funeral Home ("Forever Oak Hill" or ALicensee@) and enter into this Agreement ("Settlement Agreement") that Licensee be issued a probated license, subject to specified terms and conditions, and subject to review by the Administrative Hearing Commission.

Pursuant to the terms of Section 536.060, RSMo¹ as it is made applicable to the Administrative Hearing Commission ("AHC") by Section 621.035, RSMo, and specifically Section 333.061.5, RSMo, the parties waive the right to a hearing of the issues stipulated in this Settlement Agreement in front of the AHC, and, additionally, the right to a disciplinary hearing before the Board pursuant to Section 621.110, RSMo, and jointly stipulate and agree that a final disposition of this matter may be effectuated as described below.

¹ All statutory references are to the Revised Statutes of Missouri (2000), as amended, unless otherwise indicated.

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Licensee acknowledges that it is aware of and understands the various rights and privileges afforded to it by law, including: 1) the right to a hearing of the charges against it; 2) the right to appear and be represented by legal counsel; 3) the right to have all charges against it proven upon the record by competent and substantial evidence; 4) the right to cross-examine any witness appearing at the hearing against it; 5) the right to present evidence on its behalf at the hearing; 6) the right to a decision upon the record of the hearing by a fair and impartial Administrative Hearing Commissioner concerning the charges against it; 7) the right to a ruling on questions of law by the AHC; 8) the right to a disciplinary hearing before the Board at which time it may present evidence in mitigation of discipline; and 9) the right to a claim for attorney's fees and expenses. Being aware of these rights provided it by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement. Licensee further agrees to abide by the terms of this document as they pertain to it.

Licensee acknowledges that it has received a copy of the investigative report and other documents relied upon by the Board in determining that there was cause for discipline, along with citations to law and/or regulations the Board believes was violated. Licensee acknowledges that the Board and its attorney followed the procedures enumerated in Section 621.045, RSMo, including but not limited to: 1) providing it with a written description of the specific conduct for which discipline is sought, and a citation to the law and rules violated, together with copies of any documents which are the basis thereof; 2) allowing it at least sixty (60) days from the date of mailing to consider the Board's initial settlement offer and discuss the terms of such settlement offer with the Board; 3) advising it that it may, either at

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the time the settlement agreement is signed by all parties, or within fifteen (15) days thereafter, submit the agreement to the AHC for determination that the facts agreed to by the parties to the settlement constitute grounds for denying or disciplining their licenses; and advising it that it has the right to consult an attorney at its own expense in any contact with by the Board or its counsel.

For the purpose of settling this dispute and to avoid the delays and expenses of litigation, Licensee stipulates that the factual stipulations contained in this agreement are true and stipulate with the Board that Forever Oak Hill's funeral establishment license, license number 2004010733 is subject to disciplinary action by the Board in accordance with the provisions of Chapters 333, 436 and 621, RSMo.

Relevant Statutes and Regulations

1. Section 333.061, RSMo, requires any funeral home in Missouri to have a funeral establishment license issued by the Board and that the establishment be under the general management and supervision of a licensed funeral director. This statute also authorizes the Board to seek authority from the Administrative Hearing Commission to refuse to renew any funeral establishment license. This statute states:

333.061. 1. No funeral establishment shall be operated in this state unless the owner or operator thereof has a license issued by the board.

2. A license for the operation of a funeral establishment shall be issued by the board, if the board finds:

(1) That the establishment is under the general management and the supervision of a duly licensed funeral director;

(2) That all embalming performed therein is performed by or under the direct supervision of a duly licensed embalmer;

(3) That any place in the funeral establishment where embalming is conducted contains a preparation room with a sanitary floor, walls and ceiling, and adequate sanitary drainage and disposal facilities including running water, and complies with the sanitary standard prescribed by the department of health and senior services for the prevention of the spread of contagious, infectious or communicable diseases;

(4) Each funeral establishment shall have available in the preparation or embalming room a register book or log which shall be available at all times in full view for the board's inspector and the name of each body embalmed, place, if other than at the establishment, the date and time that the embalming took place, the name and signature of the embalmer and the embalmer's license number shall be noted in the book; and

(5) The establishment complies with all applicable state, county or municipal zoning ordinances and regulations.

3. The board shall grant or deny each application for a license pursuant to this section within thirty days after it is filed. The applicant may request in writing up to two thirty-day extensions of the application, provided the request for an extension is received by the board prior to the expiration of the thirty-day application or extension period.

4. Licenses shall be issued pursuant to this section upon application and the payment of a funeral establishment fee and shall be renewed at the end of the licensing period on the establishment's renewal date.

5. The board may refuse to renew or may suspend or revoke any license issued pursuant to this section if it finds, after hearing, that the funeral establishment does not meet any of the requirements set forth in this section as conditions for the issuance of a license, or for the violation by the owner of the funeral establishment of any of the provisions of section 333.121. No new license shall be issued to the owner of a funeral establishment or to any corporation controlled by such owner for three years after the revocation of the license of the owner or of a corporation controlled by the owner. Before any action is taken pursuant to this subsection the procedure for notice and hearing as prescribed by section 333.121 shall be followed.

2. Each funeral establishment must display its current licenses as provided in

Section 333.091, RSMo, that states:

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333.091. Each establishment, funeral director or embalmer receiving a license under this chapter shall have recorded in the office of the local registrar of vital statistics of the registration district in which the licensee practices. All licenses or registrations, or duplicates thereof, issued pursuant to this chapter shall be displayed at each place of business.

3. The Board, or its agents, may enter an establishment at any time to inspect the premises as provided in Section 333.101, RSMO, as follows:

333.101. The board or any member thereof or any agent duly authorized by it may enter the office, premises, establishment or place of business of any licensee or registrant, or any office, premises, establishment or place where the practice of funeral directing, embalming, preneed selling or providing is carried on, or where such practice is advertised as being carried on for the purpose of inspecting said office, premises or establishment and for the purpose of inspecting the license and registration of any licensee or registrant and the manner and scope of training given by the licensee or registrant to the apprentice operating therein.

4. No person may lawfully fulfill preneed contracts unless that person holds a license as a preneed seller as required by Section 333.315, RSMo, that states, in relevant part:

333.315. 1. No person shall be designated as a provider or agree to perform the obligations of a provider under a preneed contract unless, at the time of such agreement or designation, such person is licensed as a preneed provider by the board. Nothing in this section shall exempt any person from meeting the licensure requirements for a funeral establishment as provided in this chapter.

5. Section 333.330, RSMo, sets forth the Board's authority to discipline a license and states:

333.330. 1. The board may refuse to issue any certificate of registration or authority, permit, or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise

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the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

* * *

(4) Obtaining or attempting to obtain any fee, charge, tuition, or other compensation by fraud, deception, or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit, or license or allowing any person to use his or her certificate of registration or authority, permit, license, or diploma from any school;

* * *

(10) Misappropriation or theft of preneed funds;

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter regulating preneed who is not licensed or registered and currently eligible to practice thereunder;

* * *

(13) Failure to display a valid certificate or license if so required by this chapter regulating preneed or any rule established thereunder;

(14) Violation of any professional trust or confidence;

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(16) Use of any advertisement or solicitation which is false, misleading, or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed; or

* * *

(19) Violation of any of the provisions of chapter 193, 194, 407, or 436, RSMo;

* * *

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the board may, singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years, or may suspend, for a period not to exceed three years, or revoke any certificate of registration or authority, permit, or license issued under this chapter.

4. In addition to all other powers and authority granted by the board, the board may seek an injunction, restraining order or other order from the circuit court of Cole County to enjoin any seller from engaging in preneed sales upon a showing by the board that the seller has failed to make deposits into the preneed trust, has obtained funds out of the trust to which the seller is not entitled or has exercised influence or control over the trustee or has engaged in any other act that has resulted in a shortage in any preneed trust or joint account which exceeds twenty percent of the total amount required to be held or deposited into the trust or joint account under the provisions of sections 436.400 to 436.520, RSMo. In addition to the power to enjoin for this conduct, the circuit court of Cole County shall also be entitled to suspend or revoke the preneed seller's license and any other license issued pursuant to this chapter, held by the seller.

5. An individual whose certificate of registration or authority, permit, or license has been revoked shall wait three years from the date of revocation to apply for any certificate of registration or authority, permit, or license under this chapter, either as an individual or as a manager, director, shareholder, or partner of any business entity. Any certificate of registration or authority, permit, or license shall be issued at the discretion of the board after compliance with all the requirements of this chapter relative to the licensing or registration of the applicant for the first time.

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6. Use of the procedures set out in this section shall not preclude the application of the provisions of subsection 2 of section 333.335.

6. The Board has enacted rules to define certain terms used in the statutes and regulations as set forth in 20 CSR 2120-1.040 that states, in relevant part:

20 CSR 2120-1.040 Definitions

* * *

(3) Board—Missouri State Board of Embalmers and Funeral Directors created by the provisions of Chapter 333, RSMo.

(4) Corporation—a business entity incorporated under the laws of Missouri or any other state with authority to do business in the state of Missouri.

(5) Cremation log—a written record or log kept in the cremation area available at all times in full view for a board inspector, which shall include the following:

(A) The name of the deceased to be cremated;

(B) The name of the Missouri licensed establishment where the body is cremated;

(C) The date and time the body arrived at the crematory;

(D) The date and time the cremation took place;

(E) The name and signature of the Missouri licensed funeral director or Missouri licensed embalmer supervising the cremation;

(F) The supervising Missouri licensed funeral director's license number or the supervising Missouri licensed embalmer's license number; and

(G) The name of the Missouri licensed funeral establishment, or other that was in charge of making the arrangements if from a different location.

* * *

- (9) Executive director—executive secretary of the board.
- (10) Function—the purpose for which a physical location may be used.
- (11) Funeral ceremony—a religious service or other rite or memorial ceremony for a decedent.
- (12) Funeral director—an individual holding a funeral director license issued by the State Board of Embalmers and Funeral Directors.

* * *

(14) Funeral director-in-charge—an individual licensed as a funeral director by the State Board of Embalmers and Funeral Directors responsible for the general management and supervision of a Missouri licensed funeral establishment in the state of Missouri. Each have a Missouri licensed funeral director designated as the funeral director-in-charge.

(15) Funeral establishment—a building, place, or premises licensed by the Missouri State Board of Embalmers and Funeral Directors devoted to or used in the care and preparation for burial, cremation, or transportation of the human dead and includes every building, place, or premises maintained for that purpose or held out to the public by advertising or otherwise to be used for that purpose.

(16) Funeral service—any service performed in connection with the care of a dead human body from the time of death until final disposition including, but not limited to:

(A) Removal;

(B) Entering into contractual agreements for the provision of funeral services;

(C) Arranging, planning, conducting, and/or supervising visitations and funeral ceremonies;

(D) Interment;

(E) Cremation;

(F) Disinterment;

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(G) Burial; and

(H) Entombment.

(17) Interment—burial in the ground or entombment of dead human remains.

* * *

(21) Register log—a written record or log kept in the preparation/ embalming room of a Missouri licensed funeral establishment available at all times in full view for a board inspector, which shall include the following:

(A) The name of the deceased;

(B) The date and time the dead human body arrived at the funeral establishment;

(C) The date and time the embalming took place, if applicable;

(D) The name and signature of the Missouri licensed embalmer, if applicable;

(E) The name and signature of the Missouri registered apprentice embalmer, if any;

(F) The Missouri licensed embalmer's license number, if applicable;

(G) The Missouri apprentice embalmer registration number, if any; and

(H) The name of the licensed funeral establishment, or other that was in charge of making the arrangements if from a different location.

(22) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

7. The Board has enacted rules related to funeral establishments as set forth in 20

CSR 2120-2.070 that states, in relevant part:

20 CSR 2120-2.070 Funeral Establishments

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(1) Application for a Missouri licensed funeral establishment license shall be made on the forms provided by the board and shall be accompanied by the appropriate fee. Applications are available from the board's office or the board's website at <http://pr.mo.gov/embalmers.asp>. Each application shall indicate which license classification is being sought.

(2) There shall be the following license classifications:

(A) Function A establishments shall have authority to embalm dead human bodies and to transport dead human bodies to and from the funeral establishment. An establishment licensed only as a Function A establishment is prohibited from the care and preparation of dead human bodies other than by embalming, and shall also be prohibited from making funeral arrangements or embalming arrangements with any unlicensed person, cremating, conducting visitations and funeral ceremonies, and furnishing any funeral service in connection with the disposition of dead human bodies, or selling of funeral merchandise.

(B) Function B establishments shall have authority to cremate dead human bodies and to transport dead human bodies to and from the funeral establishment. This establishment shall have a functioning cremation chamber except as otherwise provided by Chapter 333, RSMo, and the rules of the board. An establishment licensed only as a Function B establishment is prohibited from the care and preparation of dead human bodies other than by cremating, and shall also be prohibited from embalming, making funeral arrangements or cremation arrangements with any unlicensed person, conducting visitations and funeral ceremonies, and furnishing any funeral service in connection with the disposition of dead human bodies or selling funeral merchandise. In no event shall any licensee or licensed establishment cremate human remains in the same retort used for cremating non-human remains.

(C) Function C establishments shall have authority for the care and preparation of dead human bodies, other than by embalming or cremating, authority to transport dead human bodies to and from the funeral establishment, make funeral arrangements, and furnish any funeral services in connection with the disposition of dead human bodies or the sale of funeral merchandise.

(D) Function D establishments shall have authority to conduct visitations and funeral ceremonies only. A Function D license is

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dependent upon and shall be operated under the supervision and ownership of a Function C establishment.

(3) If a Missouri licensed funeral establishment wishes to change or add to its classification, it shall file a new application for a Missouri licensed funeral establishment indicating its new classification. If a Missouri licensed funeral establishment desires to eliminate one (1) of its functions, other than a Function C, it shall notify the board in writing of its intention to surrender the function, but is not required to file a new application for a new Missouri licensed funeral establishment.

(4) A Missouri licensed funeral establishment shall not be used for any other business purpose other than as a Missouri licensed funeral establishment. It shall be permissible for a Missouri licensed funeral establishment to be in the same building as another business so long as the Missouri licensed funeral establishment has a separate entrance and a separate street address.

(5) A Missouri licensed funeral establishment shall be used only for the function for which it is licensed.

(6) Each application for a funeral establishment shall be made in the name of the person or business entity authorized to conduct business in Missouri. No license shall be issued to an establishment that has no legal recognition. A Missouri licensed funeral establishment shall maintain a current and active authorization to conduct business in Missouri with the Missouri Secretary of State.

(7) A funeral establishment application shall indicate the name and license number of the Missouri licensed funeral director-in-charge, as defined by 20 CSR 2120-1.040. When the Missouri licensed funeral director-in-charge changes for a period of more than thirty (30) days, the new Missouri licensed funeral director-in-charge and the former Missouri licensed funeral director-in-charge, jointly or individually, shall notify the board of the change within thirty (30) days of the date when the change first occurs. Failure to notify the board shall be considered a violation of this rule on the part of each Missouri funeral director licensee and on the part of the Missouri licensed funeral establishment. A change in the Missouri licensed funeral director-in-charge does not require a new Missouri licensed funeral establishment license.

* * *

(9) The establishment license issued by the board is effective for a fixed place or establishment and for a specific name of a person or entity authorized to

conduct business in Missouri and may include one (1) "doing business as" name. The license issued by the board shall be displayed in a conspicuous location accessible to the general public at that location. Whenever the ownership, location, or name of the Missouri licensed establishment is changed, a new license shall be obtained. If the Missouri licensed funeral establishment maintains a chapel, preparation room, or other facility in a building or portion physically separated from and located at a place designated by an address differing from the office, chapel, or other facilities of the applicant, the chapel, preparation room, or other funeral facility otherwise located shall be deemed to be a separate funeral establishment. Nothing contained in this rule shall be construed or interpreted to require a separate registration for a building if it is joined or connected by a private passage, walk or driveway existing between the registered establishment and the other building.

(A) If a change of ownership is caused by the elimination of one (1) or more owners, for whatever reason (death, sale of interest, divorce, etc.) without the addition of any new owner(s), it is not necessary to obtain a new establishment license. However, a new application for an establishment license form shall be filed as an amended application within thirty (30) days after the change of ownership. This form shall be filled out completely with correct, current information.

(B) A corporation is considered by law to be a separate person. If a corporation owns a Missouri licensed funeral establishment, it is not necessary to obtain a new establishment license or to file an amended application for an establishment license if the owners of the stock change. However, as a separate person, if a corporation begins ownership of a Missouri licensed funeral establishment or ceases ownership of a Missouri licensed funeral establishment, a new establishment license shall be obtained regardless of the relationship of the previous or subsequent owner to the corporation.

(10) The professional business and practice of funeral directing shall be conducted only from a fixed place or establishment that has been licensed by the board except as permitted by section 333.071, RSMo. The Missouri licensed funeral establishment physical facility shall be under the general management and supervision of the Missouri licensed funeral director-in-charge. Every Missouri licensed funeral establishment shall provide and allow access to any member or duly authorized agent of the board for the purpose of inspection as provided by sections 333.061 and 333.101, RSMo. If any representative of the Missouri licensed funeral establishment fails or refuses to provide or allow access, it shall be considered a violation of this rule by the

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Missouri licensed funeral establishment and by the Missouri licensed funeral director-in-charge of the Missouri licensed funeral establishment. Additionally, if the Missouri licensed funeral establishment representative who fails or refuses to provide or allow access holds any license or registration issued by this board, that person shall be in violation of this rule.

(11) No one licensed by this board may be employed in any capacity by an unlicensed funeral establishment. Violation of this section will be deemed misconduct in the practice of embalming or funeral directing.

(12) Only one (1) license will be issued by this board for any physical facility that is considered to be a Missouri licensed funeral establishment as defined by statute and rule. If a Missouri funeral establishment licensed by this board is destroyed by fire or some other disaster or act of God, the board, in its discretion, for a period of not more than six (6) months, may allow the Missouri licensed funeral establishment to continue its operation from another Missouri licensed funeral establishment or from a facility that has not been licensed as a funeral establishment if the facility meets the minimum requirements for the functions outlined in section (2) of this rule.

(13) A Missouri licensed funeral establishment may use only its registered name in any advertisement or holding out to the public.

(A) All signs, stationery and any advertising in newspapers, publications or otherwise, shall include the name(s) of the Missouri licensed funeral establishment registered with the board. Advertisements that do not comply with this section shall be deemed misleading for the purposes of section 333.121, RSMo.

(B) It shall not be deemed to be misleading if a listing appears in a telephone directory or national directory if the name of the Missouri licensed funeral establishment changes after the listing has been placed, but before a new directory is published.

(14) The interior and exterior of the Missouri licensed funeral establishment physical plant shall be kept free and clean of litter, dirt, debris, and clutter or other objects or conditions which present a potential or actual hazard to the health, safety, or welfare of the public.

(15) The interior and exterior of the Missouri licensed funeral establishment physical plant shall be maintained in a manner that does not present a potential or actual hazard to the health, safety, or welfare of the public.

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(16) Each Missouri licensed funeral establishment used solely or partially for embalming shall contain a preparation room that shall be devoted to activities incident or related to the preparation or the embalming, or both, of dead human remains and shall be equipped and maintained as described in 20 CSR 2120-2.090.

(17) No person shall be permitted in a preparation room during the course of embalming a dead human body except the employees of the Missouri licensed funeral establishment in that the human body is being embalmed, members of the family of the deceased, and persons authorized by the members of the family of the deceased, or any person otherwise authorized by law.

(18) Each Missouri licensed funeral establishment which is used solely or partially for cremations shall be equipped and maintained as described in 20 CSR 2120-2.071.

(19) Each Function C establishment shall contain a separate area for the care and custody of dead human remains and a separate area for confidential conferences to arrange funeral services. The Function C establishment shall have on-site equipment necessary for arranging funeral services including tables or desks and chairs for funeral service arrangement conferences and file cabinets for the confidential storage of funeral records.

(20) Each Function C or Function D establishment shall contain a restroom, available drinking water, and an area where funeral ceremonies or visitations may be conducted. The establishment shall be equipped with seating for visitations or funeral ceremonies, casket bier, register book stand, officiate stand, flower display stands, and music-producing equipment.

* * *

(23) Each Function C funeral establishment shall maintain on the Missouri premises the following documents:

- (A) General price list;
- (B) Preneed contracts which have been cancelled or fulfilled;
- (C) Purchase agreements; and
- (D) Authorizations to embalm or cremate.

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(26) All documents required by this rule to be maintained, shall be maintained on the premises of the Missouri licensed funeral establishment for two (2) years from the date the record was created. All documents required to be maintained by this rule may be maintained electronically, but all documents shall be stored in such a manner to allow access by the board and so the board, or its assignee, may easily and timely obtain hard copies or electronic copies in a format easily readable by the board, or its assignee.

(27) Each funeral establishment shall maintain a register log, as defined by 20 CSR 2120-1.040(21). The log shall be kept in the preparation or embalming room of the Missouri licensed funeral establishment at all times and in full view for a board inspector. If the funeral establishment does not contain a preparation or embalming room, the log shall be kept on the premises of the licensed funeral establishment and shall be easily accessible and in full view for a board inspector. A register log shall contain the information required by 20 CSR 2120-1.040(21).

* * *

(29) A licensee shall be prohibited from knowingly using, placing, or including any false, misleading, deceptive or materially incorrect information, or assisting or enabling any person to provide such information, on a death certificate filed in the state of Missouri.

* * *

8. Chapter 436 contains a specific confidentiality provision related to preneed contracts as follows:

436.525. The board shall maintain as a closed and confidential record, not subject to discovery unless the person provides written consent for disclosure, all personal information about any individual preneed purchaser or beneficiary, including but not limited to name, address, Social Security number, financial institution account numbers, and any health information disclosed in the preneed contract or any document prepared in conjunction with the preneed contract; provided, however, that the board may disclose such confidential information without the consent of the person involved in the course of voluntary interstate exchange of information; or in the course of any litigation concerning that person or the provider, seller, or sales agent involved with the preneed contract; or pursuant to a lawful request or to other administrative or law enforcement agencies acting within the scope of their

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statutory authority. In any such litigation, the board and its attorneys shall take reasonable precautions to ensure the protection of such information from disclosure to the public.

STIPULATED FINDINGS OF FACT

The parties stipulate to the following facts:

The Parties

9. The State Board of Embalmers and Funeral Directors (the "Board") is an agency of the state of Missouri created pursuant to Section 333.151, RSMo for the purpose of executing and enforcing the provisions of Chapter 333 and portions of Chapter 436, RSMo.

10. Forever Network, Inc. is a Missouri corporation in good standing. Forever Oak Hill Funeral Home is a registered fictitious name of Forever Network, Inc.

11. Forever Oak Hill Funeral Home held Missouri funeral establishment license number 2005035105 that was current and active until it lapsed on December 31, 2009.

12. Forever Oak Hill Funeral Home sought renewal of this license by submission of renewal forms and applicable fees received by the Board office on January 8, 2010.

13. Forever Oak Hill Funeral Home's funeral establishment license authorizes it to operate its funeral establishment at 10301 Big Bend, St. Louis, Missouri 63122.

14. Forever Network, Inc. properly registered with the Board that it operated using the name of "Forever Oak Hill Funeral Home."

15. Forever Oak Hill holds a "Function C" license.

16. Forever Oak Hill registered Christopher Buckley as funeral director in charge ("FDIC") of Forever Oak Hill.

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Conduct giving rise to discipline

17. Forever Oak Hill operated as a funeral establishment at a time when it held no license to operate after its license expired.

18. Forever Oak Hill held out to the public that it was a licensed funeral establishment after its license had expired.

19. On February 3, 2010, investigators for the Board conducted an inspection of Forever Oak Hill.

20. On February 3, 2010, Forever Oak Hill was open for business.

Denial of Access to Books and Records

21. As part of the February 3, 2010 inspection, the Board requested access to the books and records of Licensee.

22. During the February 3, 2010 inspection, the Board was provided no direct access to the books and records of Forever Oak Hill.

23. The Funeral Director in Charge at Forever Oak Hill was instructed by Forever Network, Inc., to provide no records to the Board's inspectors at the time of the inspection and was told that Forever Network, Inc. would provide the requested records to the Board.

24. The Board received some records from Forever Network, Inc. on February 13, 2010.

25. The Board had no means to ensure the records provided were complete and accurate.

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26. The lack of access to Forever Oak Hill's books and records prevented the Board from determining whether Forever Oak Hill complied with Missouri statutes and regulations regulating funeral establishments.

Unlicensed Activity

27. Per the records provided, Forever Oak Hill entered into at need contracts and provided funeral goods and services for the following individuals during the time its license was expired:

Name of deceased	Date of Contract	Total Charges on contract	Prepayment	Payment made by consumer
Nancy D.	1-24-10	\$ 7,476.28	FSP - \$ 744 NPS - \$1486	\$ 835.78
Maxine V.	1-4-10	\$ 643	\$ 450	\$ 43
Leslie C.	1-22-10	\$ 1,241	\$ 0	\$ 1,240.06
William C.	1-12-10	\$ 3,248		\$ 2,998
Frederick C.	1-5-10	\$ 1,013		\$ 1,013
Marian P.	1-2-10	\$ 2,636		\$ 2,636
Henry E.	1-26-10	\$ 2,566.06		\$ 2,566.06
Ann S.	1-28-10	\$ 2,971.93		\$ 2,971.93
Harvey L.	1-11-10	\$ 3,943.21		\$ 3,943.21

28. Forever Oak Hill entered into at-need contracts with Leslie C., William C., Frederick C., Marian P., Henry E., Ann S., and Harvey L. when the purchaser of the funeral services authorized the Cremation Society of St. Louis, not Forever Oak Hill, to perform the cremations set forth in the statement of goods and services.

Nancy D.

29. On January 24, 2010, Forever Oak Hill entered into an at-need contract to provide final disposition of the body of Nancy D.

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30. The at-need contract shows prepayments of “FSP” in the amount of \$744 and “NPS” policy number 92106618 in the amount of \$1,486.

31. Forever Oak Hill charged an additional \$835.78 for the goods and services provided for Nancy D.’s final disposition.

32. Forever Oak Hill made no indication on the at-need contract as to what goods and services had been prepaid and price guaranteed for Nancy D.

Maxine V.

33. On January 4, 2010, Forever Oak Hill entered into an at-need contract for the final disposition of the body of Maxine V.

34. The at-need contract shows a prepayment of \$450 from “NPS” policy number “60002150.”

35. The at-need contract shows a balance due of \$43.

36. Forever Oak Hill makes no indication on that at-need contract as to what goods and services had been prepaid and price guaranteed for Maxine V.’s final disposition.

Display of Licenses

37. On February 3, 2010, Forever Oak Hill displayed a funeral establishment license that was expired.

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CONCLUSIONS OF LAW

38. Jurisdiction and venue are proper pursuant to Section 333.061.5 and Section 333.330².

39. Forever Oak Hill engaged in the following conduct giving cause for discipline:

- a. Held out to the public as a licensed funeral establishment by being open for business after its license had expired;
- b. Provided funeral services and entered into at-need contracts at a time when its funeral establishment license was expired;
- c. Failed to be under the management and supervision of a licensed funeral director in that the FDIC was unable to provide the Board access to inspect directly books and records of the funeral establishment. Instead, the Board was given records by an off-site person with no opportunity to confirm the records were complete and accurate and in fact, records the Board would have copied were missing from what was provided.
- d. Failed to display a current license and instead displayed an outdated and expired license;

² Section 333.061.5, RSMo, references Section 333.121, RSMo, however, that section was repealed by SB1, effective August 28, 2009 and replaced with Section 333.330, RSMo.

- e. Collected compensation from consumers for at-need contracts at a time when they had no lawful authority to operate, but represented to consumers that they were properly licensed;
- f. Charged additional fees for goods and services that had been prepaid and price guaranteed;
- g. Failed to maintain a satisfactory register log;
- h. Failed to maintain books and records on premises or electronically in a format that the Board's inspectors could review and timely obtain hard copies; and
- i. Filed death certificates representing that the funeral home held a license when it did not;
- j. Assisted the Cremation Society of St. Louis in operating out of a location from which it is not licensed; and

40. The Board has cause to refuse to renew and to discipline Forever Oak Hill's funeral establishment license pursuant to Section 333.330.2 (4), (5), (6), (7), (10), (11), (13), (14), (16), and (19), RSMo.

LICENSEE TESTIMONY

If this case were to go to hearing, Licensee would testify to the following statements. The Board does not stipulate that that these statements are true and accurate. Licensee submits these statements as evidence of mitigating factors for disciplinary purposes.

41. In December 2009 Forever Network, Inc. prepared a license renewal form for Forever Oak Hill with the intention of delivering same to the Board on or before December 31, 2009.

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42. Due to a mix up in Forever Network, Inc.'s accounting department the license renewal form for Forever Oak Hill was not delivered to the Board on or before December 31, 2009.

43. On January 5, 2010 the Board notified Forever Network, Inc. that it had not received a license renewal form for Forever Oak Hill.

44. Between January 5, 2010 and January 8, 2010, Forever Network, Inc. was in communication with the Board related to its establishment license renewal for Forever Oak Hill.

45. Forever Network, Inc. was under the belief that it could continue to operate while the license renewal form was pending before the Board.

46. Forever Network Inc. was under the belief that pursuant to Section 333.081, RSMo, and 20 CSR 2120-2.020 upon tender of the license renewal form and renewal fee the Board was required to renew the license.

47. Forever Network, Inc. was under the belief that it could display its renewal applications in lieu of current and active licenses.

DISCIPLINARY ORDER

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Sections 333.061.5 and 333.330, RSMo. By Licensee's waiver of its right to have this Agreement reviewed by the Administrative Hearing Commission as set forth below, this Agreement shall be effective as of the date it is signed by the Board.

48. Forever Network, Inc. d/b/a Forever Oak Hill Funeral Home's funeral establishment license number 2004010733 is hereby placed on **PROBATION**, subject to the terms and conditions contained in this Settlement Agreement, for a period of **FIVE YEARS** (the "Disciplinary Period").

49. Terms and conditions of the Disciplinary Period are as follows:

A. Licensee shall keep the Board apprised at all times in writing of its current address and telephone number at each place of residence and business.

B. Licensee shall timely renew all establishment licenses and timely pay all fees required for license renewal and comply with all other requirements necessary to maintain this license in a current and active state.

C. If, at any time within the Disciplinary Period, Licensee changes its place of business or domicile from the State of Missouri, ceases to be currently licensed as a funeral establishment under the provisions of Chapter 333, RSMo, or fails to keep the Board advised of all current places of business and domicile, the time of absence, or unlicensed status or unknown whereabouts, shall not be deemed or taken as any part of the Disciplinary Period.

D. Licensee shall comply with all provisions of Chapters 333 and 436, RSMo; all rules and regulations of the Board; and all federal and state laws, rules and regulations related to the funeral business. "State" as used herein refers to the State of Missouri and all other states and territories of the United States. The parties specifically exclude as cause for probation violation all orders and

judgments issued in the case of *State of Texas v. Memorial Service Life Insurance Company*, et al., Cause No: D-1-Gv-08-000945, pending in the District Court of Travis County, Texas.

E. Licensee shall appear before the Board or its representatives for a personal interview upon the Board's request.

F. Licensee shall accept and cooperate with unannounced visits from the Board's duly authorized representatives to monitor its compliance with these terms and conditions. Licensee shall give the Board's duly authorized representatives access to all books and records related to Licensee's funeral establishment activities including, but not limited to, contracts, customer files, bank deposits, bank statements, financial records and any other records requested by the Board within the scope of its statutory authorities.

G. Licensee shall ensure that this funeral establishment is under the supervision and management of a licensed Missouri funeral director who has authority and access to all books and records of the funeral establishment.

H. Licensee has represented to the Board that that it intends to sell this establishment and the property associated with the funeral establishment including the cemetery property. Licensee agrees that it will make good faith efforts to complete the sale of this property and that as part of the sale transaction, Licensee will take all steps it can to ensure that a licensed preneed provider honors all outstanding preneed contracts upon which Licensee is listed as provider. This good faith effort shall include making available all requested reports and information to the

potential buyer and authorize the buyer to disclose the information as the buyer requires so that the buyer can complete its due diligence. Licensee shall report to the Board when a contract with a buyer is signed and the closing date.

I. Licensee shall submit quarterly written reports to the Board by no later than the last day of each quarter (March 31, June 30, September 30 and December 31) during the Disciplinary Period stating truthfully whether there has been compliance with all terms and conditions of this Order. Each quarterly report shall be attested to be true and accurate and notarized and signed by the funeral director in charge of the establishment and a corporate representative of Forever Network, Inc. In addition to a statement of compliance, these quarterly reports shall also include the following attachments:

i. A copy of all at-need and pre-need contracts, and any supporting documents, entered into by Licensee including any pre-need contracts signed on behalf of Licensee by any employer, agent or representative of Licensee.

ii. A copy of all payments received by Licensee for any at-need or pre-need contract along with evidence of specifically what those payments are for and where these payments are deposited.

iii. A status update on efforts made to sell this establishment and real estate.

50. Upon the expiration and successful completion of the Disciplinary Period, Licensee's establishment license shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Licensee has violated any term or condition of this Order, the Board may, in its discretion, after an

evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Licensee's establishment license.

51. No order shall be entered by the Board pursuant to the preceding paragraph of this Order without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

52. If the Board determines that Licensee has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning such violation.

53. If any alleged violation of this Order occurs during the Disciplinary Period, the Board may choose to conduct a hearing before it either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. The Board has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.

54. The Board specifically reserves, and Licensee consents to this reservation, its authority to seek discipline and/or any other cause of action against Licensee for violations related to unlicensed and/or unlawful activity as a preneed seller and/or a preneed provider. Any such action shall be subject to applicable statutes of limitations.

55. The terms of this Agreement are contractual, legally enforceable and binding, not merely recital. Except as otherwise continued herein, neither this Agreement nor any of its provisions may be changed, revised, discharged, or terminated except by an instrument in

writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

56. Each party agrees to pay all their own fees and expenses incurred as a result of this case and any ensuing litigation.

57. The parties to this Agreement understand that the Board will maintain the Agreement as an open and public record as provided in Chapters 324, 333, 436, and 610, RSMo.

58. Forever Network, Inc., together with its heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the Board, its respective members, employees, agents, and attorneys, including former members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs, expenses, and compensation, including, but not limited to, any claims for attorney=s fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. Section 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement or from the negotiation or execution of its settlement. Licensee acknowledges that this paragraph is severable from the remaining portions of this Agreement in that it survives in perpetuity even in the event that any court of law or administrative tribunal deems this Agreement or any portion thereof void or unenforceable.

59. In consideration of the foregoing, the parties consent to the termination of any further proceedings based upon the facts set forth herein.

60. Licensee understands that it has the right, either at the time of signing of this Agreement or within fifteen days thereafter, to submit this Agreement to the AHC to determine that the facts agreed to by the parties constitute grounds for disciplining the establishment license of Forever Network. If Licensee requests review, the parties jointly request the AHC determine whether the facts set forth herein are grounds for disciplining the establishment license held by Forever Network and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining the establishment license held by Forever Network. Effective the date the AHC determines that the Settlement Agreement sets forth cause for disciplining this license, the agreed upon discipline set forth herein shall go into effect.

61. With full and complete understanding of this right to review, Licensee waives all such rights and stipulates that this Agreement shall be effective as of the date this Agreement is signed by the Executive Director of the Board.

LICENSEE

STATE BOARD OF EMBALMERS AND
FUNERAL DIRECTORS

B + DG 5/18/10
(Signature) Date

Becky Dunn 5/25/10
Becky Dunn Date
Executive Director

By: Brent A Cassidy
(Print name)

Title:

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CHRIS KOSTER
ATTORNEY GENERAL



Jack Spooner
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Date

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Attorney for Licensee

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Attorneys for State Board of Embalmers and
Funeral Directors

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